

7th October 2016
Research Director
Agriculture and Environment Committee
Parliament House
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Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016

Property Rights Australia (PRA) was formed in 2003 to provide a strong voice for landowners with regard to property rights issues. It aims to promote fair treatment of landowners in their dealings with government, businesses and the community. Our philosophy is that if the community (or business) wants our resource for any other purpose such as environmental protection then the community must pay fair and unsterilised value for it.

Most of our members are in Queensland but we have members in all States.

Summary

Property Rights Australia welcomes many aspects of this Bill.

Property Rights Australia, with other landowner representatives, has expressed concerns for many years about the lack of robustness and workability of the “make good” provisions.

The Bill invokes the “make good” provisions if it is “likely” that bore impairment was caused by a resources proponent carrying out its authorised activities. This is a welcome step.

The recognition of free gas as a cause of impairment to bore delivery and infrastructure damage is long overdue.

Inclusion of repayment of costs for hydrogeology to landowners is also a matter which Property Rights Australia and other landowner groups have campaigned for in the past.

Alternative Dispute Resolution at no cost to the landowner is a recognition that none of this development is on his property at his invitation and that it often causes significant to severe business and personal loss.

Ongoing scrutiny of environmental impacts of resource projects has also been something that we have requested in the past. What is required to follow on from that is a clear and timely plan for actions to be taken in the case of poor environmental outcomes including water loss.

We would like to express our disappointment that Coal Seam Gas has not been included in a water allocation process and find it grossly unfair that irrigators more often than not have their entitlement cut back while CSG has unlimited take. There needs to be a much fairer allocation of available water.

Property Rights Australia would also like to comment on the interconnectivity between several different Acts in this Bill and the likely resultant uncertainty or confusion that may result. The interconnection of the Water Act, WROLA, WLA, EPOLA, the Environmental Protection Act and the Mineral Resources Acts have confused not only landowners but mining proponents as well.

The Explanatory Notes Outline:-

- *Payment by the resource tenement holder for strengthen the effectiveness of the environmental assessment of underground water extraction by resource projects*
- *allow the ongoing scrutiny of the environmental impacts of underground water extraction during the operational phase of resource projects through clearer links between the Environmental Protection Act 1994 and Water Act 2000*
- *improve the make good framework in the Water Act 2000*
- *ensure that the administering authority for the Environmental Protection Act 1994 is the decision-maker for specific applications relating to environmental authorities*
- *ensure the impacts of mining projects that are advanced in their environmental and mining tenure approvals are appropriately assessed for their impact on the environment and underground water users, and that opportunities for public submissions and third party appeals are provided before underground water is taken in a regulated area for mine dewatering purposes.*

Amendments to the Environmental Protection Act 1994

The administration of, the assessment of, and scrutiny of Environmental Authorities of resource authority holders exercising their statutory underground water rights will fall on the Department of Environment.

While Property Rights Australia welcomes the ongoing scrutiny of underground water effects, we are concerned about the steps that will be taken to ensure that “other” water users receive timely advice of variations from predicted impacts up to and including the trigger which invokes “make good”.

In evidence to the parliamentary committee by departmental representatives, Ms Brennan, Manager, Environmental Policy and Legislation, Department of Environment and Heritage Protection has said,¹

Ms Brennan: The other thing about the Environmental Protection Act is that we focus on environmental impacts. We would not be focusing on impacts on other water users, so we would not be focusing on impacts on other bores and other water users would who rely on that resource.

Mr PERRETT: I assume that generally these sorts of projects go through the Coordinator-General?

Ms Brennan: Some of them would; some of them would go through an EIS under the Environmental Protection Act.

The legislation needs to outline a process that ensures that any changes which will impact on other water users are concurrently notified so that the responsible government departments can keep other water uses informed. This process cannot be left to goodwill or chance and it is vital that it is formalised so that “other” water users are not left surprised. There is no excuse for all other water users not being kept fully informed about the state of aquifers, bores, springs and other water sources.

Amendments to the Water Act 2000

Property Rights Australia welcomes changes to S412 which strengthens the position of landowners with respect to impairment and damage to water bores.

The recognition of free gas as an impairment to both water available from a bore and as a cause of damage to infrastructure are necessary amendments.

It was also a problem that the onus of proof of a bore impairment rested with the landowner.

Legislating that the bore impairment was “likely” caused by the exercise of a resources underground water entitlement is a necessary change.

These amendments have been the subject of submissions and public addresses by Property Rights Australia over many years.

Access to alternative dispute resolution for producers with respect to a water bore at no cost to the producer also redresses an imbalance.

¹ <https://www.parliament.qld.gov.au/documents/committees/AEC/2016/EPUWMOLAB2016/12-trnsp-30Sept2016.pdf> p6

Amendment to WROLA

S423(3)(a)

- (a) reimburse the bore owner for any accounting, hydrogeology, legal or valuation costs the bore owner necessarily and reasonably incurs in negotiating or preparing a make good agreement;

The inclusion of the cost of a hydrogeologist is long overdue and supported.

Also welcome is the inclusion of costs for landowners of alternative dispute resolution.

S116 Extends the ability of the Chief Executive to require a bore assessment including when there is a belief that the bore has been impaired by free gas.

Transitional Provisions

Property Rights Australia welcomes measures which address potential problems which could occur as a result of unlimited take of underground water. Measures which improve the continuous scrutiny of environmental impacts and resultant effects on landowners are welcomed.

Divisions 1250A to 1250U seem like sensible and necessary provisions.

Property Rights Australia has some moderate reservations about 1250U. It may well facilitate the cutting through of red tape allowing a bore owner and a proponent to come to a speedy and satisfactory arrangement.

However, such non-interventionist proposals sometimes allow an unacceptable degree of coercion and bullying. We will be monitoring landowner response to this section.

Joanne Rea

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Treasurer

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